

ESTTA Tracking number: **ESTTA544039**

Filing date: **06/19/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194706
Party	Defendant UVCleaning Systems, Inc. dba Puralytics Corporation
Correspondence Address	DAVID P PETERSEN KLARQUIST SPARKMAN LLP 121 SW SALMON ST STE 1600 PORTLAND, OR 97204-2927 UNITED STATES ptotmdocket@klarquist.com, salumeh.loesch@klarquist.com
Submission	Motion to Strike
Filer's Name	Kevin M. Hayes
Filer's e-mail	ptotmdocket@klarquist.com, kevin.hayes@klarquist.com, salumeh.loesch@klarquist.com
Signature	/Kevin M. Hayes/
Date	06/19/2013
Attachments	MOTION TO STRIKE OPPOSERS' REPLY BRIEF.pdf(1236146 bytes)

1047406 Ontario Ltd. and
Purifics ES, Inc.,

V.

Applicant.

§2.128(a)(1). Defendant's (Applicant's) brief deadline was May 23, 2013.¹ Fifteen days after May 23, 2013, was June 7, 2013. Thus, Opposers had until **Friday June 7, 2013**, to file their Reply Brief. But, they did not file or serve their Reply Brief until Monday June 10, 2013. See the "Filing date" of Opposers' Reply Brief and the appended Certificate of Service.

As Opposers failed to timely file and serve their Reply Brief, the Board should refuse to consider it and should strike it from the record.

III. The Board Should Strike Opposers' Reply Brief For Exceeding The Page Limitations Without Permission

A Reply Brief may be only 25 pages, including the table of contents, index of cases etc. Opposers' Reply Brief totals 27 pages. As the Board states: "it is only with the Board's permission, timely sought, that a brief exceeding the page limit will be entertained." TBMP 537. Opposers' Reply Brief is too long and they lack permission from the Board to file an over length Reply Brief. Their Reply Brief should be stricken.

Under the Rules:

[b]riefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cases cited. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety." 37 CFR §2.128(b) (emphasis added).

¹ Defendant's deadline requires calculation from the end of Plaintiff's 15-day Rebuttal Period. In that regard, the Board's November 30, 2012, set a schedule where Plaintiff's 15-day Rebuttal Period ended on February 22, 2013. Under 37 CFR § 2.128(a), Plaintiff's main brief was due not later than 60 days after the date set for the close of the rebuttal testimony period; Defendant's main brief was due not later than 30 days after the due date of the Plaintiff's main brief; and Plaintiff's reply brief was due not later than 15 days after the due date of the Defendant's main brief. Calculating the deadlines from the Board's order of November 30, 2012, results in the following deadlines:

Plaintiff's Main Brief	April 23, 2013
Defendant's Main Brief	May 23, 2013
Plaintiff's Reply Brief	June 7, 2013

Despite this rule, Opposers' brief includes 4 pages of a table of contents and index of cases numbered i-iv along with 23 numbered pages of argument. That is 27 pages when only 25 are allowed.

Opposers could have filed a motion for leave to exceed the page limit, but they did not. Opposers perhaps did not ask for permission because the TMBP notes that "[m]otions for leave to file a brief on the case in excess of the page limit are disfavored by the Board and rarely granted." TMBP §537. In any event, since Opposers lack permission for their over length filing, and the Board states that it will not entertain a brief exceeding the page limitations unless the filer has "the Board's permission, timely sought" - the Board should strike the Reply Brief and not consider it. TBMP § 537. *See American Optical Corp. v. Atwood Oceanics, Inc.*, 177 USPQ 585 (Comm'r 1973) (refusing to consider a too long brief).

IV. Conclusion

Opposers filed too long of a Reply Brief too late. The Board should grant Applicant's motion to strike the Reply Brief and not consider it.

Dated: June 19, 2013

Respectfully submitted,

UVCLEANING SYSTEMS, INC., dba
PURALYTICS CORPORATION

By: 

Salumeh R. Loesch
salumeh.loesch@klarquist.com

David P. Petersen
david.petersen@klarquist.com

Kevin M. Hayes
kevin.hayes@klarquist.com

Klarquist Sparkman, LLP
One World Trade Center, Suite 1600
121 SW Salmon Street
Portland, Oregon 97204

Tel: 503-595-5300

Fax: 503-595-5301

*Attorneys for Applicant UVCleaning Systems, Inc.,
dba Puralytics Corporation*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 19, 2013, the foregoing MOTION TO STRIKE OPPOSERS' REPLY BRIEF AS UNTIMELY AND EXCEEDING THE PAGE LIMITATION was served on Opposers' attorneys by first class mail, to:

Lisa H. Meyerhoff Myall S. Hawkins Tan Pham William R. Hales Baker & McKenzie LLP 711 Louisiana, Suite 3400 Houston, Texas 77002
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Kevin M. Hayes